IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4962 of 1999

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO LTD. - Appellant(s)
Versus
RAMESHBHAI SOMABHAI VANKAR & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR Sunil Mehta for Mr. SK BUKHARI for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 06/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The appellant-United Insurance Co.Ltd. has challenged in this appeal the impugned judgment and award dated 7-5-1999 passed by the Motor Accident Claims Tribunal – (Aux), Panchmahals at Godhra (for short “the Tribunal”) in M.A.C.P. no.607 of 1995 partly allowing the claim petition of the respondents-claimants.

2. The claimant Shri Rameshbhai Somabhai Vankar belonging to the lower strata of society i.e. Vankar from Schedule Castes met with an accident when he was going on his bicycle on 4-3-1995 at 4.30 p.m. near Limkheda bridge on Dohad – Godhra Highway by tanker no.G.J-2T-8543 which was driven in rash and negligent manner by its driver-Fuljibhai Gulabji Thakor. He was only 18 years old at the time of the accident doing Diploma in Agriculture after completing SSC. Because the tanker dashed with the claimant, he received serious injuries on his person. He became unconscious and was removed to SSG Hospital, Vadodara. After 15 days of the treatment he regained consciousness but he was unable to move, speak and see properly.

3. For claiming compensation, he filed claim petition no.607 of 1995 before the learned

Tribunal and claimed in all Rs.4,50,000/-, however, the learned Tribunal partly allowed the claim petition and awarded Rs.3,95,200/- in all. The claimant was satisfied with the award but the Insurance Company had challenged the same by way of this appeal.

4. Learned Counsel Shri Vibhuti Nanavati for the appellant-Insurance Company firstly, submitted that the learned Tribunal committed grave error in coming to the conclusion that total disability of the claimant could easily be assessed at 50% for the body as a whole. He submitted that the learned Tribunal should have discarded the evidence of Dr.Advait Sukumar Mehr, Exh.43 who is not a qualified Neuro. He submitted that in any case the Tribunal ought not to have assessed the disability of the claimant more than 25% for the body as a whole of the claimant. In support of his submission Shri Nanavaty has brought to our notice, admission made by the Doctor in his cross-examination that he had not obtained any certificate from Neurosurgeon and that he had experience of three years in London. It is true that Dr.Mehr, Exh.43 was not a Neurosurgeon, but he has stated on oath that he was MS General Surgeon and had experience of Neurosurgeon in London for three years and that he was running his private hospital as Neurosurgeon since 1981.

In the instant case, due to accident life of a young boy aged 18 has become miserable. His vision of one eye is not only seriously affected but he is even not able to speak properly. After a period of more than eleven years of the accident, even today, the claimant who is personally present before the Court was not in a position to speak properly or see with his left eye and his entire body starts trembling after some time. The Doctor has rightly stated in his evidence that the claimant's life has become miserable and he has to live like an animal. His father who is present before the Court has stated that he is only looking after his son, and though he is aged 28, he could not get him married because of his poor health.

5. Under the circumstances, we are of the considered opinion that learned Tribunal has not committed any error in assessing disability at 50% for the body as a whole of the claimant. In fact, in our considered opinion, it was 100% disability as the claimant is unable to do anything in his life and perhaps he has to live the rest of his life like an animal. However. there is no cross appeal or cross objections from the respondent. Therefore, we cannot do anything further in the matter.

6. This brings us to the second contention raised by Mr. Nanavaty for the appellant-Insurance Company that in the instant case, the Tribunal could have at the most awarded Rs.30,000/- for pain, shock and suffering and not Rs.50,000/-. This contention of Mr. Nanavaty has to be straight away rejected in view of what we have stated here-in-above. Perhaps Rs.50,000/- is also less. Except the aforesaid two contentions, no other argument was advanced by Mr. Nanavaty.

7. Having carefully gone through the impugned judgment and award passed by the learned Tribunal and the reasons given by the learned Tribunal for awarding in all Rs.3,95,200/-, we are of the considered opinion that no interference is called for in this appeal.

8. In view of the above discussion, the appeal fails and is hereby dismissed with costs. Once the appeal of the Insurance Company is dismissed, we direct the amount if lying deposited with the bank be paid to the claimant by way of account payee cheque.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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